S.B.Civil Writ Petition NO.225/2005
Jabar Chand & Ors.

vs

The Addl. District Judge (Fast Track), Merta & Ors.

DATE OF ORDER : - 13.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Manoj Bhandari, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioners' writ petition against the order of the trial court dated 23rd Nov., 2004 by which the petitioners' application under Order 39 Rule 7 CPC was dismissed by the trial court.

According to learned counsel for the petitioner, the trial court has committed serious error of law in rejecting the petitioners' application only on the ground that the trial court has already rejected the petitioners' application under Order 26 Rule 9 CPC filed in the Civil Original Suit. According to learned counsel for the petitioner, the provisions of Order 26 Rule 9 CPC and Order 39 Rule 7 CPC are independent and the petitioners by the application filed under Order 39 Rule 7 CPC only requested the court to appoint Commissioner so that

the factual position of the site may be brought no record, which will facilitate the correct decision of the application filed under Order 39 Rule 1 and 2 CPC.

It appears from the facts of the case that the trial court had rejected the petitioners' application filed in the main suit under Order 26 Rule 9 CPC for appointment of Commissioner to inspect the site on the ground that the Commissioner appointed to collect the evidence. It appears from the order passed in the main suit that the trial court also held that petitioner can produce his own evidence to rebut the case of the non-petitioner. Since the impugned order has been passed within the jurisdiction of the court and the petitioner has ample means to produce the evidence contradicting the Commissioner report, therefore, I do not find any justification for interfering in the order passed by the trial court dated 19th Nov., 2004 as there is no jurisdictional error in the order.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-